

May 12, 2005

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re: *IP-Enabled Services Rulemaking*; WC Docket No. 04-36  
*United Online, Inc. Ex Parte Meeting Notice***

Dear Ms. Dortch:

United Online, Inc. (“United Online” or “Company”), by its undersigned counsel and pursuant to Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, hereby notifies the Commission that on May 11, 2005, the undersigned accompanied by Frederic Randall, General Counsel, Justin Newton, Senior Vice President of Technology, Henry Kim, Vice President, Telecommunications Services, and Brad Toney, Director of Legal Affairs, met with the following people: Commissioner Abernathy, Lauren Belvin, Legal Advisor to Commissioner Abernathy, Michelle Carey, Legal Advisor to Chairman Kevin Martin, Barry Ohlson, Senior Legal Advisor to Commissioner Adelstein, Jessica Rosenworcel, Legal Advisor to Commissioner Michael Copps, Thomas Navin, Wireline Competition Bureau Chief, Pamela Arluk, Legal Counsel to the Bureau Chief, and Christi Shewman, Attorney Advisor, to discuss Voice Over Internet Protocol (“VoIP”) and E-911 services.. Written material provided at these meetings are attached hereto.

At the outset, United Online acknowledges that public safety and appropriate access to emergency services is an important goal. With that in mind, United Online urges the Commission to be careful not to adopt a new 911 mandate that sweeps in services and technologies not designed as a replacement for home telephone service and not expected by United Online, its customers – or even, we submit, regulators – to be a source of emergency services access.

United Online provides consumer Internet subscription services, including dial-up Internet access, premium email, personal web hosting and community-based networking, through brands such as NetZero, Juno and Classmates. United Online intends to offer VoIP

services under its NetZero brand. The Company intends to offer the following different VoIP product lines: (1) a peer-to-peer VoIP service; (2) an outbound-only service that only allows for the termination of traffic on the PSTN; and (3) a product that will allow for both inbound and outbound calling. In all manifestations of the service, the VoIP customer *will be required to use a general purpose computer and a software program*. None of the three products, as planned, will be offered through a terminal adapter, nor will they allow for the attachment of traditional telephone equipment.

The initial VoIP services to be offered by United Online, as currently conceived, will be a natural extension to the existing online consumer communications such as email and instant messaging offered to customers, and the PC must be actively used to access the various communication interfaces. These services will be supplemental to, rather than the replacement for, traditional telephone services. In order to make use of United Online's VoIP service, the customer must turn on their computer, wait for it to boot, log on to the Internet utilizing their user identification and password, and then enter a second password to launch the VoIP software client application.

In determining what types of services should be subject to a VoIP E-911 requirement, the Commission should look to the *IP Enabled Services NPRM* for guidance. The Commission's *IP-Enabled Services NPRM* imported the four part test used by the Commission in the *E-911 Scope Order*<sup>1</sup> to determine which services should be subject to the Commission's 911 and E-911 rules. The Commission established the following criteria:

- 1) Whether a service is a real-time, two-way switched voice service, interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services;
- 2) If customers using the service or device have a reasonable expectation of access to 911 and enhanced 911 services;
- 3) Whether the service competes with traditional CMRS or wireline local exchange service; and
- 4) Whether it is technically and operationally feasible for the service or device to support E911.<sup>2</sup>

---

<sup>1</sup> See *Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems; Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements; Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission's Rules to Establish Emissions Limits for Mobile and Portable Earth Stations Operating in the 1610-1660.5 MHz Band*, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340, (2003) ("E-911 Scope Order").

<sup>2</sup> See *E-911 Scope Order*, ¶ 55.

As an initial matter, United Online highlights that two of its product lines fail the first prong of this test. The peer-to-peer service is not interconnected with the PSTN and the outbound-only service is not a two-way switched service. Clearly, neither of these two services should be subject to a VoIP E-911 obligation.

United Online emphasizes that its third product line which allows for originating and receiving communications from the PSTN should also not be subject to any E-911 obligations. While United Online appreciates that “bright line tests” are favored by regulators, procrustean standards will stifle innovation, reduce consumer choice, and impede competition. Consumer expectations are difficult to measure and do not lend themselves to hard and fast rules. However, the extremes can be clearly discerned and it is the Commission’s obligation in developing regulations to ensure that its rules are narrowly tailored to resolve the problem presented. Line drawing may be difficult but the Commission must not abdicate its responsibility to adopt reasonable regulations. Accordingly, the Commission must not jettison the consumer expectation test nor any of the other factors that the Commission has historically relied upon to determine the extent of E-911 obligations.

The Commission must recognize that these computer-based services that require a launched software application in order to utilize are so different from traditional phone systems that they will not be mistaken for a home line replacement service. The Commission should take steps to ensure that any new 911 mandate does not cover services and technologies for which a 911 obligation would serve no useful public interest or consumer purpose and would only serve as a barrier to further innovation in consumer services. Reasonable consumers will not rely on the United Online PC-dependent and software-based service to provide E-911 functionality.

*The United Online VoIP product will require the use of both a general purpose personal computer, in contrast to a single purpose computing device such as an Analog Telephone Adapter, and a launched software application.* In order to use the service, United Online consumers must turn their computer on, wait for the computer to complete the startup process, log onto to the Internet (in some cases requiring the provision of a user identification and password), log on to the VoIP application by providing a separate user identification and password, strap on a headset, position the microphone, dial through the software application, and connect. The VoIP service is not immediately available for use like a traditional telephone service or some of the other broadband VoIP services that make use of Analog Terminal Adapters. For example, on wireline and wireless phone, E-911 services are never more than 3 or 4 keystrokes away but United Online’s VoIP service requires many more steps to initiate a call. There is no dial tone associated with the United Online VoIP service and the devices attached to the computer to place calls do not resemble traditional telephone equipment. For all of these reasons, United Online will not be marketing the service as a home line replacement.

All of these details distinguish United Online’s service from most other VoIP products in the marketplace and are important factors in determining whether it would be a reasonable consumer expectation to rely on these services to provide E-911 functionality. In the event United Online chooses to offer an additional service that is intended to be used as a home

replacement service, then it would offer, for that service, E-911 functionality since United Online fully supports the Commission's public safety objectives.

Third parties visiting a United Online VoIP consumer would not reasonably rely on the United Online VoIP service to connect to an E-911 call. For example, a friend visiting the house of a United Online VoIP consumer that encounters an emergency will not rush to the computer to make an E-911 call even assuming the computer is on and connected to the appropriate service at the time of the emergency – a highly unlikely scenario. In many cases, no one other than the primary account holder will even have the credentials necessary to connect to the services, and therefore complete a 911 call. Instead, they will look for a traditional telephone to make the call.

Finally, extending VoIP E-911 obligations to this type of service would constitute poor public policy. By requiring a VoIP product like that described in this filing to offer E-911 services, the Commission would be establishing a set of consumer expectations that does not currently exist for such services. Such a mandate could have the perverse result of encouraging consumers to drop their traditional telephone line as a result of the Commission's VoIP E-911 order, exposing consumers to substantial risk. A VoIP service that requires a general purpose PC coupled with a launched software application in order to use will not provide a level of E-911 service that is suitable for consumers to rely on because of the time and complexity of the task required to place a call. Accordingly, for the reasons detailed in this filing, the Commission must not apply a VoIP E-911 obligation to this type of service.

If you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

\_\_\_\_\_/s/  
Catherine Wang  
Ronald W. Del Sesto, Jr.

Counsel for United Online, Inc.

cc: Commissioner Kathleen Abernathy  
Lauren ("Pete") Belvin (FCC)  
Michelle Carey (FCC)  
Barry Ohlson (FCC)  
Jessica Rosenworcel (FCC)  
Thomas Navin (FCC)  
Pamela Arluk (FCC)  
Christi Shewman (FCC)